THE HON'BLE MR JUSTICE ELIPE DHARMA RAO

-

WRIT PETITION NO : 18908 of 2005

-

DATED:25-08-2005

-

Ch.Venkateshwar Rao.

..... PETITIONER

AND

The District Collector (Panchayat Division)

Machilipatnam, Krishna District & 2 others.

.....RESPONDENTS

ORDER:

-

This Writ Petition is filed under Article 226 of the Constitution of India seeking a Mandamus declaring the action of the 1st respondent, in continuing the petitioner under suspension pending enquiry, beyond statutory period of three months, despite enquiry being completed, as illegal and arbitrary.

2. It is the case of the petitioner that he was elected as Sarpanch of Chigurukota Gram Panchayat during the election held on 14-08-2001and his term was expired by December, 2005. On certain allegations levelled against the petitioner, the 1st respondent ordered enquiry, which started on 09-10-2004 and completed on 30-04-2005. Meanwhile, the Mandal Parishad Development Officer concerned sent the report of estimated loss sustained by the Gram Panchayat basing on which explanation was called for from the petitioner. The 1st respondent placed the petitioner under suspension pending further detailed enquiry vide his proceedings in RC.No.2295/2004/PS, dated 05-03-2005, invoking the powers under Section 249(6)

of the A.P.Panchayat Raj Act (for brevity, "the Act"). After completion of the detailed enquiry the petitioner was directed to remit an amount of Rs.47,729-90ps towards the loss sustained by the Gram Panchayat and the petitioner remitted the same on 11-07-2005. No show cause notice was issued to the petitioner as to why such amount was imposed as penalty on him. Despite the remission of the amount by the petitioner, no orders of reinstatement were passed so far. Aggrieved thereby, the petitioner approached this Court by way of filing the present Writ Petition.

3. Heard both sides.

4. I have perused the entire material on record.

Section 249 of the A.P.Panchayat Raj Act reads as under:

Powers of Government to remove Sarpanch, President or Chairperson, etc., *:-*

(1) If in the opinion of the District Collector the Sarpanch or the Upa-Sarpanch and in the opinion of the Government the President or the Vice-President or as the case may be, the Chairperson or the Vice-Chairperson,---

i. *Willfully omitted or refused to carry out the orders of the Government for the proper working of the concerned local body; or*

The Collector or as the case may be, the Government, may remove such Sarpanch or Upa-Sarpanch, President or Vice-President or as the case may be the Chairperson or the Vice-Chairperson, after giving him an opportunity for explanation:

Sub-Section 6 of Section 249 of the Act contemplates:- If the District Collector is of the opinion that a Sarpanch or a Upa-Sarpanch or any member of a Gram Panchayat or the Government are of the opinion that any President or Vice-President or the Chairperson or Vice-Chairperson or any member of a Mandal Parishad or Zilla Parishad willfully omitted or refused to carry out the orders of Government for the proper working of the concerned local body or abused his position or the powers vested in him, and that the further continuance of such person in the inhabitants of the village, Mandal or District, the District Collector or as the case may be, Government may, by order, suspend such Sarpanch or Upa-Sarpanch or President or Vice-President or as the case may be, the Chairperson or Vice-Chairperson or member from office for a period not exceeding three months, pending investigation into the said charges and action thereon under the foregoing provisions of this section:

3. *There is an exception to the above said general rule that no order under this sub-section shall be passed unless the person concerned has had an opportunity of making a representation against the action proposed.*

5. Considering the facts and circumstances of the case and in view of the provisions laid under Section 249(6) of the Act, I deem it appropriate to dispose of the Writ Petition directing the 1st respondent to consider the representation of the petitioner and pass appropriate orders in accordance with law within a period of two weeks from the date of receipt of a copy of this order.

6. Accordingly, the Writ Petition is disposed of. No order as to costs.

(ELIPE DHARMA RAO,J)

25th August, 2005.

tsy